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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,109	01/14/2004	Steven B. Dunn	MBI-1164	2938

7590 06/10/2005

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/757,109	Applicant(s) DUNN ET AL.	
	Examiner Yvonne R. Abbott	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-60 is/are pending in the application.
- 4a) Of the above claim(s) 41-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9-13, 18-20, 23-31, 36-38, 47-51, 53 and 55-60 is/are rejected.
- 7) ☒ Claim(s) 6, 8, 14-17, 21, 22, 32-35, 39, 40, 52 and 54 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2005 4/16/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 18, 23, 36, 47, 50 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Samiean (6,155,270). Samiean discloses a manicure kit capable of being used to apply styptic to a pet comprising a storage container bottle (18) with a chamber for holding a fluid (the chamber is capable of holding styptic); a removable cap or covering means (27) for the container, wherein the cap is flush with a side of the container; an applicator device (28) for applying the fluid; and a filing device (32) which is located on a top portion of the container.

3. Claims 1, 2, 5, 7, 9, 18, 23, 24, 27, 28, 29, 36, 47, 48, 51, 53, 55 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Bratby-Carey (5,897,262). Bratby-Carey discloses a manicure device capable of being used to apply styptic to a pet comprising a storage container bottle (12,28) with a chamber (14,30) for holding a fluid (the chamber is capable of holding styptic); a removable cap or covering means (44) for the container, wherein the cap is flush with a side of the container; an applicator device (22,42) for applying the fluid; and a removably attached filing device (16) which is located on a side portion of the container (12), wherein the filing device is

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an emery board and it is attached to the container by means of a sticky adhesive coating material.

4. Claims 47, 51 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Burnett (2,273,559). Burnett discloses a receptacle capable of being used to apply styptic to a pet comprising a storage container bottle (5) with a chamber for capable of holding a styptic (where the lipstick is held as is shown in the Kaplan reference US 2004/0191317); a removable cap or covering means (20) for the container, wherein the cap is flush with a side of the container; and a removably attached cross hatched filing device (21).

5. Claims 1, 3-5, 9, 18, 19, 23, 25-27, 29, 36, 37, 47, 49, 50, 51, 55 and 60 are rejected under 35 U.S.C. 102(b) as being anticipated by Griffiths, Jr. (5,762,077). Griffiths, Jr. discloses a manicure device capable of being used to apply styptic to a pet comprising a storage container bottle (12,42) with a chamber for holding a fluid (the chamber is capable of holding styptic); a removable cap or covering means (112,136) for the container, wherein the cap is flush with a side of the container; an applicator device (78,96) for applying the fluid; and a filing device (132,148) which is located on top and bottom portions of the container depending on your orientation and to which file is being referred; wherein the filing device is an emery board and can also come in a variety of textures (col. 7, lines 4-5); wherein the cap(s) comprise a gripping depression (122,142) on a side.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 10-13, 30, 31, and 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffiths, Jr. Griffiths, Jr. disclose that the filing device comprises emery board and can come in a variety of textures, therefore to provide that the texture has a herring bone cross-hatch, both coarse and fine cross-hatch, or is made of metal or sandpaper would have been obvious to one of ordinary skill in the art since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Additionally, Applicant's description of using different textures lacks disclosed criticality.

8. Claims 20 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bratby-Carey ('262) in view of Gabriele (5,443,172). Although Bratby-Carey disclose a manicure device comprising a receptacle having a removable cap, it is not disclosed that the cap comprises a gripping surface made of elastomeric material for improved gripping. Gabriele teaches a non-slip closure grip for a receptacle wherein to use the non-slip closure grip (10), a person simply can tighten and loosen the cap

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member (18) on the upper portion (14) of the receptacle (12) by engaging the fingers with the elastomeric band (36). Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the elastomeric grip of Gabriele on the cap of Bratby-Carey as taught by Gabriele that the elastomeric band (36) has a gripping surface to make opening and closing of the cap member (18) easier, by significantly reducing the strength required to do this.

Double Patenting

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 47 and 51 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9 and 10 of U.S. Patent No. 6,827,038. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both claim a container for containing styptic material and a filing device removably attached to the container.

Allowable Subject Matter

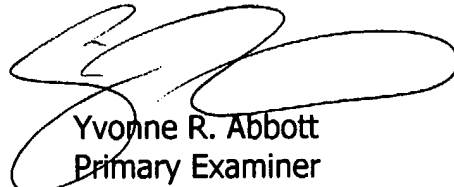
10. Claims 6, 8, 14-17, 21, 22, 32-35, 39, 40, 52, and 54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
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5/10/05